

The Fourth Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (United Transportation Union - Yardmasters Department
(Indiana Harbor Belt Railroad Company

STATEMENT OF CLAIM:

Claim is for Extra Yardmaster Gerald S. Tomecko for ten days pay at the Yardmaster rate of pay account of being suspended from Carrier's service on January 8, 1987 as the result of investigation held January 5, 1987.

FINDINGS:

The Fourth Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

This is a discipline case in which Claimant was given a ten day suspension because he allegedly was responsible for certain traffic not being picked up by Soo Line Train No. 201 on December 16, 1986 while he was working as an extra Assistant General Yardmaster at Gibson, Indiana. Carrier maintains that Claimant failed to coordinate his activities with yard crews so that certain time sensitive truck-rail traffic could be switched out and made available for a prompt pickup by Train 201 upon its arrival.

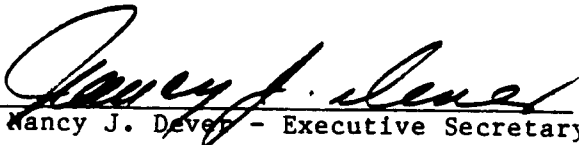
We have examined the testimony adduced at the investigation and conclude that Carrier's decision to assess discipline is based almost entirely upon surmise and conjecture. From our reading of the transcript it seems that Carrier proceeded under the assumption that it is important to protect this traffic, the pickup was not made, ergo, Claimant was responsible. Suspicion, surmise and conjecture cannot be used to fill an evidentiary gap. Carrier has the burden of persuasion in disciplinary cases and this burden has not been met here.

The Claim will be sustained.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

Attest: 
Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 15th day of December 1988.